



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Maria L. Hess,  
Department of Community Affairs

CSC Docket No. 2018-1504

Administrative Appeal

**ISSUED: July 23, 2018**

**(SLD)**

Maria Hess, a Paralegal Technician 1, with the Department of the Community Affairs (DCA), appeals the adjustment of her leave allowances due to a leave of absence.

By way of background, the appellant was entitled to 140 hours (7 hours multiplied by 20 days) of vacation leave and 105 hours (7 hours multiplied by 15 days) of sick leave, per year, which was credited on January 1, 2017. On June 6, 2017, the appellant went on an unpaid leave of absence, and she returned to work on July 10, 2017. As a result of her unpaid leave of absence, her leave allowances were reduced by 23.20 hours (3.32 days) of vacation leave and 17.50 hours (2.5 days) of sick leave. *See N.J.A.C. 4A:6-1.5(b)*. In this regard, it was determined that since the appellant was not on the payroll from the 9th through the 23rd day of the month for either June or July, she was not entitled to any leave time for those months. *See N.J.A.C. 4A:6-1.5(b)*.

On appeal, the appellant argues that the proration of her leave time for July was unfair. Specifically, she argues that she was unfairly penalized as she returned from her leave of absence on July 10, yet because she was not on the payroll on July 9 she lost a full month's worth of leave time. Moreover, she notes that July 9 was a Sunday. Additionally, the appellant argues that the appointing authority's interpretation is incorrect. Instead, she argues that the "9<sup>th</sup>" referenced in the rule refers to nine days of being on the payroll and not the 9<sup>th</sup> day of the month.

In response, the appointing authority reiterates that the appellant's leave allowances were correctly calculated pursuant to *N.J.A.C.* 4A:6-1.5(b).

### CONCLUSION

*N.J.A.C.* 4A:6-1.5 provides, in pertinent part, that:

\* \* \*

- (b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.
- (c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

Additionally, *N.J.A.C.* 4A:1-1.2(c) provides that the Civil Service Commission (Commission) may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the appellant argues that it is unfair that she was not credited with one-half of one month's entitlement of leave time for July simply because she was not in pay status from the 9th through the 23rd day of the month, despite having returned on Monday July 10.

In *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Commission noted that *N.J.A.C.* 4A:1-1.3 defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the

rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question. However, in the instant matter, the appellant was in pay status for 22 calendar days, which is seven more calendar days than the time period encompassed by the 9th through the 23rd days of the month. It seems patently unfair to penalize this employee by not providing her with any prorated leave time for July, despite working more days than are encompassed within the required dates, simply because the dates she worked were not within those required dates. Additionally, *N.J.A.C. 4A:6-1.5(b)* provides that an employee who works more than 23 days earns a full month's allotment of leave time. Moreover, *N.J.A.C. 4A:6-1.5(c)* provides in relevant part that intermittent days off without pay shall be aggregated, and when the intermittent days off without pay, "equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement." Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C. 4A:6-1.5(b)* and credit the appellant with one-half month's allowance of sick and vacation leave time (or 4.38 hours of sick leave and 5.8 hours of vacation leave) for July 2017.

One matter warrants additional comment. The wording of *N.J.A.C. 4A:6-1.5(b)* may lead to illogical results, as evidenced by the instant matter. Therefore, that section is under review by this agency for changes consistent with this and previous decisions.

### ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 18TH DAY OF JULY, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Maria Hess  
Jodi Evangelista  
Kelly Glenn  
Records Unit